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**From:** Alan Coyle [Alan.Coyle@tie.ltd.uk]  
**Sent:** 06 October 2010 10:50  
**To:** Andrew Scott; Stewart McGarrity; Gregor Roberts; Damian Sharp  
**Cc:** Ailie Wilson  
**Subject:** FW: Edinburgh Gateway - Transport Scotland Funding  
**Attachments:** IS.GRANT OFFER.SM(04.10.10).doc; IS.SCHEDULE.SM(4.10.10).doc

Folks. See attached grant letter and schedule. Also we have asked legal to advise on this letter to ensure CEC/tie are protected.

Please get back to Ailie if you have any comments.

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**From:** Alan Coyle [mailto:Alan.Coyle@edinburgh.gov.uk]  
**Sent:** 06 October 2010 10:47  
**To:** Alan Coyle  
**Subject:** FW: Edinburgh Gateway - Transport Scotland Funding

Regards

Alan Coyle | Financial Services | Corporate Finance Team (Edinburgh Trams) | Level 2/6 Waverley Court | 4 East Market St EH8 8BG | [alan.coyle@edinburgh.gov.uk](mailto:alan.coyle@edinburgh.gov.uk) |  
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**From:** Iain Strachan  
**Sent:** 05 October 2010 12:03  
**To:** Kevin.Murray@transportscotland.gsi.gov.uk; Trudi.Craggs@dundas-wilson.com  
**Cc:** Davinia Cowden; Mark.Robertson@transportscotland.gsi.gov.uk; Steve Sladdin; Ailie Wilson; Alan Coyle; Nick Smith  
**Subject:** Edinburgh Gateway - Transport Scotland Funding

Kevin/Trudi,

I refer to the above. Slightly later than planned, I return the draft Offer Letter and draft Terms and Conditions following discussions with Steve and Ailie. The attached documents are returned with tracked changes, and includes some drafting notes, and I have made some further comments below. Once Kevin returns from holiday then the best way to take this forward might be to meet so we can discuss it further.

I'd add that my clients haven't seen my actual revisals yet, although as mentioned above I have discussed the points with them, so the drafts are subject to any additional comments they might have.

#### Offer Letter

1. One point of note which comes up here and elsewhere is that because of the manner in which CEC is being asked to help assist the delivery of this project, there is exposure to costs which it would not otherwise have to meet, for example in connection with securing vacant possession for Network Rail. To this end, we do not feel the level of grant funding should be capped across the board, and rather certain elements might require to be uncapped. We also don't feel there should be caps on certain specified costs within the total permitted level of funding (ie no Eligible Capital Costs Allocations), but rather all permitted costs should be covered, subject to my previous comments that some may be uncapped.
2. We will need to discuss the conditions precedent further.

3. In Clause 3.1.4 we need to allow for the fact that potentially the contractors and consortium might change.
2. In Clause 4.2, as mentioned above, if there is to be any sort of maximum then this should be a global figure, and not capped in respect of individual items of claim.
3. In Clause 4.3 there is either an Event of Default or there is not, and these provisions should only apply where there is.

**Terms and Conditions**

1. I have inserted new definitions of tie, TEL and Project into the definitions Section.
2. Clause 3.3 – I feel that in the event of an emergency, or where commercially important, the Council should be able just to terminate such contracts without first giving such notice.
3. Clause 3.6 – Steve was wondering what the reasoning behind this Clause was?
4. Clause 4.8/9/10 – As stated above we do not believe there should be Eligible Capital Costs Allocations. Again, as mentioned above, we don't feel there should be such a rigid cap on the level of funding, and I've proposed wording used in one of the other funding agreements that we can potentially recover cost overruns, and also that the Council is entitled to additional funding to cover costs incurred as a consequence of what I've called Third party Arrangements, which I generally see as arrangements other than the actual contract with the BSC Consortium.
5. Clause 12.7 - I've specifically covered off any obligations to release information by law, and information the Council should properly inform its members or as a consequence of its Standing Orders.
6. Clause 13.2.1 – We felt that (c) was potentially too wide. Generally in connection with the Events of Default I felt that the Council should be given more opportunity to remedy any potential default situations, and again in 13.4 the Council should be given an opportunity to remedy any alleged defaults before such remedies are capable of enforcement.
7. Clause 14 – I have specified that we can sub-contract obligations.
8. Clause 18.1 – I've covered off that we will no doubt be granting rights to Network Rail and other third parties, of access and so on.
9. Annexe 1 – This is naturally one of the most important aspects. It needs to be discussed generally, but we need a more inclusive list of committed costs which will include the actual tram works, together with costs payable to the third parties such as Network Rail, crichel down costs, costs of monitoring of works and so on.

Once you have had this opportunity to consider this e-mail and attachments then we can perhaps set up a meeting. As mentioned before, I am on annual leave for the week commencing 18 October.

Regards

Iain

**Iain Strachan** | Principal Solicitor | Real Estate | Legal and Administrative Services | The City of Edinburgh Council | Level 3 Waverley Court | 4 East Market Street | EH8 8BG | dd: [REDACTED] | fax: 0131 529 3603

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